(11)

SUPREME COURT U.S.
FILED
JUL 23 2002
OFFICE OF THE CLERK

No. 01-1862

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

JEANNE WOODFORD, Petitioner,

v.

ROBERT FREDERICK GARCEAU, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

DEATH PENALTY CASE

LYNNE S. COFFIN*
STATE PUBLIC DEFENDER
FOR THE STATE OF CALIFORNIA
221 Main Street, 10th Floor
San Francisco, CA 94105
(415) 904-5600

DENISE KENDALL
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Mill Valley, CA 94941
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*Counsel of Record for Respondent
ROBERT FREDERICK GARCEAU

81 pp

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FILED
KERN COUNTY
MAY 2 1995
TERRY McNALLY, CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

THE PEOPLE OF THE STATE OF CALIFORNIA) No. SC029601A
VS.) NOTICE OF HEARING
ROBERT FREDERICK GARCEAU) DATE: May 16, 1995
) TIME: 8:30 A.M.
) DEPT: One

Whereas this Court having been notified that the United States Supreme Court denied the defendant's Writ of Certiorari on October 3, 1994, the automatic appeal from the death sentence being denied by the California Supreme Court on November 18, 1993, and a motion seeking to stay the issuance of the remittitur and requesting rehearing being denied on January 26, 1994, hearing is set pursuant to Rule 490 of the California Rules of Court, to wit:

The Setting of Execution Date will be heard on May 16, 1995, at 8:30 A.M., in Department One of the Superior Court, County of Kern.

DATED: May 2, 1995

TERRY McNALLY
Clerk of the Superior Court

by C. L. KING, Deputy

FILED
KERN COUNTY
MAY 2 1995
TERRY McNALLY, CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

THE PEOPLE OF THE STATE OF CALIFORNIA) No. SC029601A
VS.) CERTIFICATE OF PROOF OF SERVICE BY MAIL
ROBERT FREDERICK GARCEAU)

The undersigned, of said Kern County, says: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern; that I am a citizen of the United States, over 18 years of ages, a resident of Kern County, and not a party to the within action, that I served the above Notice of Hearing on counsel for the respective parties in the within action by depositing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at Bakersfield, California, addressed as shown on the list attached and made a part hereof.

Executed on: May 2, 1995, at Bakersfield, California.

C. L. KING, Deputy Clerk

PEOPLE VS. GARCEAU, SC029601A

DANIEL E. LUNDGREN
ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA
Attn: John A. Gordnier, Senior Assistant
P. O. Box 944255
Sacramento, CA 94244-2550

EDWARD R. JAGELS
DISTRICT ATTORNEY OF THE COUNTY OF KERN
Attn: John Somers, Dep. D. A.
1215 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301

Mr. Doron Weinberg, Esq.
WEINBERG AND WILDER
523 Octavia Street
San Francisco, CA 94102

Ms. Denise Kendall, Esq.
1510 Fourth Street
Berkeley, CA 94710

EXECUTIVE DIRECTOR
CALIFORNIA APPELLATE PROJECT
Attn: Linda Lenker
~~345 Franklin Street~~
~~San Francisco, CA 94102~~ Ecker Place, Suite 400
San Francisco, CA 94105

Robert Frederick Garceau
D-39413
San Quentin Prison
Tamal, CA 94974

LSC

JUDGE-

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FILED
MAY 12 1995
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEATH PENALTY CASE

ROBERT FREDERICK GARCEAU,

Petitioner,

v.

ARTHUR CALDERON, Warden of California State Prison at San Quentin,

Respondent.

No CV-F-95 5363OWW -P

~~[PROPOSED]~~ ORDER STAYING EXECUTION AND ALL PROCEEDINGS

Upon request of petitioner ROBERT FREDERICK GARCEAU, through his state appellate counsel, and pursuant to Local Rules 191 (d) (1) and 191 (h) (2),

IT IS HEREBY ORDERED that all proceedings, including the execution of petitioner's sentence of death be stayed forty-five (45) days to permit the appointment of counsel for petitioner. The Warden of San Quentin Prison is ordered to stay all proceedings related thereto, and to stay the scheduling of any execution date for forty-five (45) days to, and including, June 26, 1995, unless such stay is extended by the Court.

IT IS FURTHER ORDERED, that this matter be referred to the Selection Board for the United States District Court for the Eastern District of California for its recommendation regarding the reappointment of state appellate counsel to represent petitioner in federal habeas corpus proceedings.

The Clerk of the Court shall give immediate telephonic notice to respondent, Arthur Calderon,

DEATH PENALTY

Warden of the San Quentin Prison, that petitioner s execution is stayed by the Order of this Court. The Clerk of the Court shall also serve a certified copy of this order on petitioner, respondent, Arthur Calderon, Warden of San Quentin State Prison, Arthur Ruthenbeck, Federal Defender and Chair of the Selection Board for the Eastern District, Michael G. Millman, Executive Director of the California Appellate Project and member of the Selection Board for the Eastern District; the Clerk of the Kern County Superior Court, Daniel Lungren, Office of the Attorney General of the State of California, and Edward Jagels, District Attorney of Kern County

DATED May 12, 1995

UNITED STATES DISTRICT JUDGE

PRESENTED BY

Weinberg & Wilder

By
DORON WEINBERG

Law Office of Denise Kendall

By
DENISE KENDALL

Attorneys for Petitioner
ROBERT FREDERICK GARCEAU
in California Supreme Court Proceedings

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT FREDERICK GARCEAU

vs. CV-F-95-5363-OWW-P

ARTHUR CALDERON

_____/

I, the undersigned, hereby certify that I am an employee of the Office of the Clerk, U.S. District Court, Eastern District of California. That on 5/12/95, the original having been filed, I served a copy of the attached order staying execution, by placing a copy in a postage-paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the United States Mail at Fresno, California, or by placing said copy in an inter-office delivery receptacle located in the Clerk's Office.

SERVED BY MAIL: SERVED BY INTER-OFFICE DELIVERY:

Robert F. Garceau
P.O. Box D-39413
Tamal, CA 94974

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San Anselmo, CA 94960

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California Appellate Project
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Arthur Calderon, Warden
California State Prison, San Quentin
San Quentin, CA 94964

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Sacramento, CA 95814

Jerri Curtis, Capital Case Coordinator
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P.O. Box 193939
San Francisco, CA 94119-3939

Kern County Clerk
Attn: Criminal Division
1415 Truxtun Ave
Bakersfield, CA 93301

Edward Jagels, District Attorney
Kern County District Attorney
1215 Truxtun Avenue, Room 4018
Bakersfield,CA 93301

Kern County Public Defender
1315 Truxtun Avenue
Bakersfield, CA 93301

Jack L. Wagner, Clerk

By
T. Bertalotto, Deputy

prfsvc

1CV

5/12/95

DORON WEINBERG, State Bar No 046131
WEINBERG & WILDER
523 Octavia Street
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DENISE KENDALL, State Bar No 120802
LAW OFFICE OF DENISE KENDALL
862 Sir Francis Drake, No 301
San Anselmo, CA 94960
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On behalf of ROBERT FREDERICK GARCEAU

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEATH PENALTY CASE

ROBERT FREDERICK GARCEAU,

Petitioner,

v.

ARTHUR CALDERON, Warden of California State Prison at San Quentin,

Respondent.

_____/

Case No CV F-95-5363-OWW-P

EX PARTE APPLICATION FOR STAY OF ALL PROCEEDINGS TO PERMIT APPOINTMENT OF COUNSEL, NOTICE OF INTENTION TO FILE PETITION FOR WRIT OF HABEAS CORPUS, CONDITIONAL APPLICATION FOR APPOINTMENT OF COUNSEL, AND DECLARATIONS OF DORON WEINBERG AND DENISE KENDALL

Petitioner ROBERT FREDERICK GARCEAU, a prisoner of the State of California, hereby gives notice pursuant to Rules 191 (d) (1) and 191 (h) (2) of the Local Rules of practice of the United States District Court for the Eastern District of California (Hereinafter "Local Rules") that he intends to file a petition for writ of habeas corpus to seek relief from the judgement of death imposed against him by the Kern County Superior Court, State of California, finding him guilty of first degree murder and imposing a sentence of death upon him, and hereby requests appointment of counsel. The subject judgment has been affirmed in all respects by the

California Supreme Court, and the United States Supreme Court has denied certiorari review. State appellate counsel are appearing specially on Mr. Garceau's behalf for the purpose of filing the subject notice, applying for a stay of all proceedings to permit appointment of counsel, conditionally applying to be appointed as counsel subject to a status conference regarding such appointment.

The District Attorney for Kern County, State of California, has moved the Superior Court of Kern County for an execution setting conference to be held on May 16, 1995. The District Attorney additionally moved the court for an execution date of July 14, 1995. Petitioner hereby applies for an immediate stay of all proceedings for forty-five (45) days through and including June 26, 1995, to permit the appointment of counsel to represent him in federal habeas corpus proceedings.

Petitioner also applies to this Court pursuant to Local Rules 191 (d) (1) and 191 (h) (2) for an order referring this matter to the Selection Board for the United States District Court for the Eastern District of California for its recommendation regarding the reappointment of state appellate counsel to represent petitioner in federal habeas corpus proceedings. The rules of this Court provide that when state appellate counsel is willing to continue to represent a capital habeas corpus petitioner in federal proceedings, he may apply to confirm his appointment before undertaking preparation of a petition for writ of habeas corpus. Local Rule 191 (d) (1). Mr. Weinberg and Ms. Kendall have represented petitioner before the California Supreme Court on automatic appeal and in state habeas corpus. Counsel are familiar with the issues in the case and desire to continue representing petitioner in federal habeas corpus proceedings. To this end, state appellate counsel respectfully request a status conference for the purpose of determining the ability of counsel to continue to represent petitioner, the propriety of counsels' doing so and the Court's expectations concerning such continuing representation. Counsel would be available to meet with the Court on May 23rd or 30th, 1995 or at such other time as the Court might suggest.

The status of petitioner's case and history of representation are

1. On June 15, 1987, petitioner was convicted by a jury in criminal case number 29601 of two counts of first degree murder, enhanced with a finding of personal use of a deadly or dangerous weapon in the Superior Court of Kern County, California. (California Penal Code sections 187 and 12022.) Petitioner was also convicted of the special circumstance of conviction of more than one offense of murder, rendering petitioner death eligible. (California Penal Code section 190.2 (a) (3).) On June 25, 1987 the jury returned a verdict of death.

2. The California Supreme Court subsequently appointed Doron Weinberg and Lynne Coffin to represent petitioner in connection with his automatic appeal of the convictions and death judgment. Thereafter Lynne Coffin withdrew from the case and Denise Kendall substituted in as co-counsel for petitioner. Counsel timely filed petitioner's automatic appeal to the California Supreme Court in criminal case number S004776. On November 18, 1993, the California Supreme Court affirmed the judgment and sentence of death. People v. Garceau, 6 Cal.4th 140 (1993).

3. Petitioner timely filed his petition for writ of habeas corpus with the California Supreme Court on or about August 9, 1991. On September 1, 1993 the petitioner for writ of habeas corpus was denied on the merits.

4. Petitioner subsequently filed a timely petitioner for writ of certiorari with the United States Supreme Court, which was denied on October 3, 1994.

5. Petitioner, who is indigent, has been confined at the California State Prison at San Quentin, San Quentin, California since his original sentencing on July 30, 1987.

6. The District Attorney of Kern County has requested the court set an execution date of July 14, 1995. A hearing on the request is scheduled for May 16, 1995. No other state proceedings are currently pending.

7. State appellate counsel believe there are multiple meritorious claims of violations of petitioner's federal constitutional rights which will be presented to this Court in a petition for writ of habeas corpus. The United States Supreme Court has mandated that a habeas corpus

petitioner "must conduct a reasonable and diligent investigation aimed at including all relevant claims and grounds for relief in the first federal habeas corpus petition." McCleskey v. Zant, ___ U.S. ____, 111 S.Ct. 1454, 1472 (1991) (emphasis added). Counsel will request a reasonable period within which to continue the investigation in anticipation of presenting all meritorious claims in a petition filed with the Court.

In light of the above, petitioner requests the following:

(a) that the Court issue an immediate stay of all proceedings for forty-five (45) days through and including June 26, 1995 to permit the appointment of counsel in federal habeas proceedings;

(b) that the Court convene a conference with state appellate counsel on May 23rd or 30th, 1995 or at such other time as is convenient to the Court, to discuss the terms of counsels' continued representation of petitioner; and

(c) that the Court refer this matter to the Selection Board for the United States District Court for the Eastern District of California for its recommendation regarding the reappointment of state appellate counsel to represent petitioner in federal habeas corpus proceedings.

DATED: May 11, 1995

Respectfully submitted,

DORON WEINBERG

DENISE KENDALL

DECLARATION OF DORON WEINBERG

I, DORON WEINBERG, declare:

1. I am an attorney at law admitted to practice before this court and was appointed by the California Supreme Court to represent petitioner in the automatic appeal of his convictions and death judgment and in the state habeas corpus proceedings stemming from the same convictions and judgment of death. As a result of my representation of petitioner, I have personal knowledge of the facts set forth herein.

2. At the time of my appointment to represent petitioner in connection with his automatic appeal, petitioner was indigent. Petitioner remains indigent today.

3. I have prepared with co-counsel the documents entitled Ex Parte Application for Stay of Execution to Permit Appointment of Counsel; Notice of Intention to File Petition for Writ of Habeas Corpus; Conditional Application for Appointment as Counsel; Request for Status Conference; and Declaration of Denise Kendall to which this declaration is appended. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 11, 1995 at San Francisco, California.

DORON WEINBERG

DECLARATION OF DENISE KENDALL

I, DENISE KENDALL, declare:

1. I am an attorney at law admitted to practice before this court and substituted in as co-counsel to represent petitioner in the automatic appeal of his convictions and death judgment and in the state habeas corpus proceedings stemming from the same convictions and judgment of death. As a result of my representation of petitioner, I have personal knowledge of the facts set forth herein.

2. At the time of my substitution to represent petitioner in connection with his automatic appeal, petitioner was indigent. Petitioner remains indigent today.

3. I have prepared with co-counsel the documents entitled Ex Parte Application for Stay of Execution to Permit Appointment of Counsel; Notice of Intention to File Petition for Writ of Habeas Corpus; Conditional Application for Appointment as Counsel; Request for Status Conference; and Declaration of Doron Weinberg to which this declaration is appended. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 11, 1995 at San Francisco, California.

DENISE KENDALL

PROOF OF SERVICE BY MAIL

I am a citizen of the United States; I work in the county of Marin, where this mailing occurs; I am over the age of eighteen and not a party to the within action. My business address is 862 Sir Francis Drake, No. 301, San Anselmo, CA 94960. I served the within:

Ex Parte Application for Stay of Execution to Permit Appointment of Counsel; Notice of Intention to File Petition for Writ of Habeas Corpus; Conditional Application for Appointment as Counsel; Request for Status Conference; and Declaration of Doron Weinberg; Declaration of Denise Kendall

on the following person(s) on the date set below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, by United States mail at San Francisco, California, as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 11, 1995, at San Anselmo, California.

DENISE KENDALL

SERVICE LIST
(Robert Garceau v. Arthur Calderon)

Office of the Attorney General
P.O. Box 9442550
Sacramento, CA 94244-2550

Edward Jagels, Esq.
District Attorney
Kern County
1215 Truxton Ave
Bakersfield, CA 93301

Gale S. Enstad, County Clerk
Kern County Superior Court
1415 Truxton Ave.
Bakersfield, CA 93301

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One Ecker Place, Ste. 400
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Arthur W. Ruthenbeck, Esq.
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801 K Street, 10th Floor
Sacramento, CA 95814

Mr. Robert F. Garceau
D-39413
San Quentin Prison
Tamal, CA 94974

Arthur Calderon, Warden
San Quentin State Prison
San Quentin, CA 94964

FILED
JUN 26 1995
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU, Petitioner, vs. ARTHUR CALDERON, as Warden of San Quentin State Prison, Respondent.	No. CV-F-95-5363-OWW-P DEATH PENALTY CASE ORDER APPOINTING COUNSEL AND TEMPORARY STAY OF EXECUTION

Petitioner, a state prisoner facing capital punishment, filed a petition for a writ of habeas corpus in this court pursuant to 28 U.S.C. § 2254. On May 12, 1995, this court stayed Petitioner's execution for forty-five (45) days and referred the matter to the Selection Board for its recommendation of one or more counsel to be appointed to represent Petitioner.

The Selection Board has recommended the appointment of Denise Kendall, Esq. and the California Appellate Project as co-counsel to represent Petitioner. Given the complex, demanding, and protracted nature of death penalty proceedings, this court has the authority to appoint two counsel to represent

Petitioner. 21 U.S.C. § 848(q)(4).

GOOD CAUSE APPEARING:

IT IS ORDERED that Denise Kendall, Law Office of Denise Kendall, 862 Sir Francis Drake Boulevard, Suite 301, San Anselmo, CA 94960, (415) 258-0296, and the California Appellare Project, One Ecker Place, Fourth Floor, San Francisco, CA 94105, (415) 495-0500, are appointed as co-counsel to represent Petitioner for all purposes in these proceedings.

IT IS FURTHER ORDERED that Petitioner is granted a temporary stay of execution for one hundred twenty (120) days from the date of this order to prepare and file his amended petition, such time to be extended upon a showing of good cause. Local Rule 191(h)(3).

IT IS FURTHER ORDERED that Respondent shall lodge the state record in accordance with the provisions of Local Rule 191(i) within thirty days of service of this order.

IT IS FURTHER ORDERED that each document be specially marked as follows to facilitate processing:

1) Directly below the case number in the caption of each document provide the following label: "DEATH PENALTY CASE" in capital letters and underscored;

2) At the bottom of the first page of each document insert "DEATH PENALTY" in capital letters with a stamp or a felt-tipped marker.

DATED: June 16 1995

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU,
Petitioner,

vs. CV-F-95 5363 OWW P

ARTHUR CALDERON, as Warden of San Quentin State Prison,
Respondent.

_____/

I, the undersigned, hereby certify that I am an employee of the Office of the Clerk, U.S. District Court, Eastern District of California. That on June 26, 1995, the original having been filed, I served a copy of the attached order granting temporary stay of execution and appointment of counsel, by placing a copy in a postage-paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the United States Mail at Fresno, California, or by placing said copy in an inter-office delivery receptacle located in the Clerk's Office.

SERVED BY MAIL:

Robert F. Garceau
P.O. Box D-39413
Tamal, CA 94974

Denise Kendall
862 Sir Francis Drake, No. 301
San Anselmo, CA 94960

Michael G. Millman, Executive Director
Lynne S. Coffin, Staff Attorney
California Appellate Project
One Ecker Place, Ste 400
San Francisco, CA 94105

Arthur Calderon, Warden
California State Prison, San Quentin
San Quentin, CA 94964

Dan Lungren, Attorney General
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

SERVED BY INTER-OFFICE DELIVERY:

Arthur Ruthenbeck, Federal Defender
801 K Street
Sacramento, CA 95814

Jerri Curtis, Capital Case Coordinator
Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

Kern County Clerk
Attn: Criminal Division
1415 Truxtun Avenue
Bakersfield, Ca 93301

T. Bertalotto, Deputy Clerk

DANIEL E. LUNGREN, Attorney General
of the State of California
GEORGE WILLIAMSON, Chief
Assistant Attorney General
JOHN A. GORDNIER (State Bar #45250)
Senior Assistant Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5169

Attorneys for Respondent

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU, Petitioner, v. ARTHUR CALDERON, as Warden of San Quentin State Prison, Respondent.	No. CV-F-5363-OWW-P **DEATH PENALTY CASE** NOTICE OF MOTION TO VACATE THE STAY OF EXECUTION Date: Sept. 5, 1995 Time: 10:00 a.m. Dept: 2

Respondent hereby gives notice that on the fifth day of September, 1995, at ten o'clock a.m. or as soon thereafter as the Court can hear the matter, he will move to vacate the stay of execution now in effect and, further, will seek an order directing that a petition be filed forthwith.

Said motion will be made on the basis of the record lodged with the Court on July 18, 1995, the points and authorities which accompany the motion attached to this notice and any other relevant authorities subsequently filed and provided to counsel for

/ / / /

/ / / /

/ / / /

petitioner.

DATED: August 1, 1995.

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General
GEORGE WILLIAMSON
Chief Assistant Attorney General

JOHN A. GORDNIER
Senior Assistant Attorney General

JAG:es
SA95VW0003

DECLARATION OF SERVICE BY MAIL

Re: Garceau v. Calderon No. CV-F-95-5363-OWW-P

I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause; my business address is P.O. Box 944255, Sacramento, California, 94244-2550. I served a true copy of the attached

NOTICE OF MOTION TO VACATE THE STAY OF EXECUTION

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Denise Kendall
Attorney at Law
862 Sir Francis Drake, No. 301
San Anselmo, CA 94960

Mr. Robert F. Garceau
D-39413
San Quentin Prison
Tamal, CA 94974

Honorable Gale S. Enstad
Clerk, Kern County
1415 Truxtun Avenue
Bakersfield, CA 93301

Arthur Calderon, Warden
San Quentin Prison
San Quentin, CA 94964

Jerri Curtis
Capitol Case Coordinator
Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

Michael G. Millman, Esq.
Staff Attorney
Calif. Appellate Project
One Ecker Place, Ste 400
San Francisco, CA 94105

Arthur Ruthenback, Esq.
Federal Defender
801 K Street
Sacramento, CA 95814

Edward Jagels, Esq.
Kern Co. District Attorney
1415 Truxton Ave.
Bakersfield, CA 93301

Each said envelope was then, on August 1, 1995, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 1995, at Sacramento, California.

DECLARANT

DANIEL E. LUNGREN, Attorney General
of the State of California
GEORGE WILLIAMSON, Chief
Assistant Attorney General
JOHN A. GORDNIER (State Bar #45250)
Senior Assistant Attorney General
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Sacramento, CA 94244-2550
Telephone: (916) 324-5169

Attorneys for Respondent

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU, Petitioner,	)	No. CV-F-5363-OWW-P DEATH PENALTY CASE
ARTHUR CALDERON, as Warden of San Quentin State Prison, Respondent.	)	MOTION TO VACATE THE STAY OF EXECUTION Date: Sept. 5, 1995 Time: 10:00 a.m. Dept: 2

PROCEDURAL STATEMENT

On May 12, 1995, this court entered an order staying the execution of petitioner for forty-five days to permit appointment of counsel for petitioner. This order was entered at the request of the counsel who represented petitioner in both his appeal of conviction and his petition for habeas corpus before the California Supreme Court.

In the petition counsel in the state proceedings specifically asked to continue to represent petitioner in the federal habeas corpus proceedings.

/ / / /

/ / / /

On June 16, 1995[1], this court entered an order which appointed counsel who represented petitioner in the state proceedings as counsel in the federal habeas corpus proceedings. The order also granted a stay of one hundred twenty days from that date for the purpose of filing the amended petition.[2]

As of the date of the filing of this motion no petition has been filed and served on respondent. The execution date previously set has been vacated and no new date has been scheduled because of this court's stay issued as part of the June 16, 1995 order. The purported authority for this stay is Rule 191(h)(3) of the local (Eastern District) rules.

STATEMENT OF THE ISSUE

WHEN COUNSEL WHO IS NOT NEW TO THE CASE IS APPOINTED RULE 191(h)(3) DOES NOT PERMIT A STAY OF EXECUTION TO BE ISSUED.

Rule 191(h)(3) provides, in pertinent part:

> "Where *counsel new to the case* is appointed, upon counsel's application for a temporary stay of execution *accompanied by a specification of nonfrivilous issues to be raised in the petition*, the Court shall issue a temporary stay of execution . . ." (Emphasis added.)

The language of the rule goes on to provide for a one hundred and twenty day stay.

There are two reasons why Rule 191(h)(3) cannot be applied in this case.

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1. While the date on the order is June 16, 1995, the order was not filed until June 26, 1995.

2. The use of the word "amended" would appear to be in error. The only documents provided to respondent are an Order Staying Execution, an Ex Parte Application For Stay . . . Notice Of Intention To File Petition For Writ Of Habeas Corpus . . . and Order Appointing Counsel. No petition has been filed or if it has been filed it has not been timely served on respondent.

First, assuming that "counsel new to the case" had been appointed, there has been no "specification of nonfrivilous issues". On pages three and four of the Ex Parte Application upon which this court's May 12th order is based, there is a conclusory statement that "State appellate counsel believe there are multiple meritorious claims of petitioner's federal constitutional rights which will be presented . . . in a petition . . .". No other representations were made. Thus, the rule simply was not satisfied because no attempt was made to specify the issues as required.

Second, and more important, this case does not involve "counsel new to the case". This is undisputed. At page two of the Ex Parte Application upon which this court's May 12th order is based, petitioner's counsel stated:

> "The rules of this Court provide that when state appellate counsel is willing to continue to represent a capital habeas corpus petitioner in federal proceedings, he may apply to confirm his appointment before undertaking preparation of a petition for writ of habeas corpus. *Mr. Weinberg and Ms. Kendall have represented petitioner before the California Supreme Court on automatic appeal and in state habeas corpus.* Local Rule 191(d)(1)." (Emphasis added.)

Indeed, it appears to be undisputed that counsel for petitioner recognized that Rule 191(h)(3) did not apply. Counsel for respondent agrees that Rule 191(h)(3) cannot apply and, therefore, asserts that the stay issued under the authority of that rule must be vacated forthwith.[3/]

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3. Counsel for petitioner may argue that because C.A.P. was named as second counsel there is a "counsel new to the case" involved. Respondent would argue that before any such assertion were permitted by this Court it would be necessary for C.A.P. to represent that it has not previously had any exposure to or involvement in the direct appeal or state habeas matters.
Even if such an affidavit were filed it would not matter

Rule 191(d)(1) actually provides:

> "In light of this presumption (favoring continuing representation by state appellate counsel), it is expected that appointed counsel who is willing to continue representation and who has been certified by the selection board as qualified to do so, *would ordinarily file a motion for appointment of counsel* on behalf of his or her client *together with the client's federal habeas corpus petition. If however, counsel for any reason wishes to confirm appointment before preparing the petition, counsel may move for appointment as described above, before filing the petition.*"

Thus, the local rule permits counsel one of two avenues. The first is to file the application for appointment and petition at the same time (the ordinary method) and the second is to file the petition at the time he or she knows the appointment is confirmed; in this case on or about June 26th or within a reasonable time thereafter.[4/]

Petitioner's broad assertion, without citation to authority, that the local rules permit waiting for confirmation of appointment "before undertaking preparation of a petition . . ." is simply wrong. As we have seen the rule permits waiting until confirmation "before filing the petition."[5/]

/ / / /

---

because it is clear from reading rule 191(d)(1) that second counsel's familiarity or lack thereof does not govern the time for filing the petition (see the argument in the main body of this motion, *infra*).

4. Given the familiarity of counsel with the case, a reasonable time would be the same amount of time given a respondent familiar with the case. By rule this would be thirty days (see Rule 191(i)(3); see also Rule 191(i)(4)).

5. While the language of the last sentence of Rule 191(d)(1) does, at one point use the phrase "before preparing the petition" the context is clearly that the only time added is that which is necessary to confirm appointment and not an undefined period beyond confirmation.

As was stated in *Steffen* v. *Tate* 39 F.2d 622 (6th Cir. 1994):

> "Consequently, the issue comes down to whether a petitioner who is clearly able and ready, though definitely unwilling, to file a writ of habeas corpus comes under the *McFarland* rule, which would permit a federal court to stay an execution without a pending habeas petition. We hold that *McFarland* does not extend that far. It would be a mockery of the limited role of federal courts in state criminal proceedings to allow federal courts simply to shut down the state capital-punishment process on the pretense that a habeas proceedings is 'pending'." (At page 627.)

While *Steffen* involved the issue of unexhausted state issues, the logic cited *supra*, has been applied in *In re Parker* 49 F.3d 204 (6th Cir. 1994), a case remarkably similar to this.

Parker was a case in which the Circuit Court of Appeals granted a writ of mandate directing a district court to vacate a stay of execution granted in a case in which counsel familiar with and previously of record in that case was counsel in the federal habeas corpus proceeding. In words which, respondent submits, speak to the heart of the problem in this case, the *Parker* court held:

> "Neither the statute nor *McFarland* stand for the proposition that an already well-represented prisoner may invoke the 'stay' jurisdiction of a federal court by seeking pre-petition appointment of counsel who already represents him. Stanford's position would allow a prisoner with counsel who has represented him for years, as is the case here, to stop all state proceedings against him indefinitely at the sufferance of a federal judge with no habeas petition pending before him. This stay would not exist, as it normally would, for as long as it takes to decide the merits of the petition. This pre-petition stay survives until either Stanford decides to file his actual petition, or until the district court or this court decides to dissolve the stay, thereby forcing the filing of the habeas petition.
>
> "*McFarland* did not countenance such an outcome. In fact such ad hoc decision making in capital cases is

> exactly what the Supreme Court has been trying to avoid. *See McCleskey v. Zant*, 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991); *Coleman v. Thompson*, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). As we stated in *Steffen v. Tate*, 39 F.3d 622, 625 (6th Cir. 1994), '[t]here is no indication in the opinion that the Court's reading of the statute applies to the case of a well-counseled prisoner whose counsel, for technically admirable, though dilatory, reasons, wishes to obtain both the security of a stay of execution from a federal court while simultaneously reserving, rather than exercising and thus exhausting, his right to federal court review by petitioning for a writ of habeas corpus.'" (At page 211.)

CONCLUSION

Here some thirty plus days have passed since counsel of record in both the state criminal appeal and state habeas corpus proceeding was confirmed as counsel in the federal habeas proceeding, yet no petition is on file. Respondent now asks this Court to enforce its own rules, vacate the stay erroneously ordered on May 16th and direct that counsel file the petition forthwith.

DATED: August 1, 1995.

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General
GEORGE WILLIAMSON
Chief Assistant Attorney General

JOHN A. GORDNIER
Senior Assistant Attorney General

JAG:as
SAPSXW0003

DECLARATION OF SERVICE BY MAIL

Re: Garceau v. Calderon No. CV-F-95-5363-OWW-P

I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause; my business address is P.O. Box 944255, Sacramento, California, 94244-2550. I served a true copy of the attached

MOTION TO VACATE THE STAY OF EXECUTION

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Denise Kendall
Attorney at Law
862 Sir Francis Drake, No. 301
San Anselmo, CA 94960

Jerri Curtis
Capitol Case Coordinator
Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

Mr. Robert F. Garceau
D-39413
San Quentin Prison
Tamal, CA 94974

Michael G. Millman, Esq.
Staff Attorney
Calif. Appellate Project
One Ecker Place, Ste 400
San Francisco, CA 94105

Honorable Gale S. Enstad
Clerk, Kern County
1415 Truxtun Avenue
Bakersfield, CA 93301

Arthur Ruthenback, Esq.
Federal Defender
801 K Street
Sacramento, CA 95814

Arthur Calderon, Warden
San Quentin Prison
San Quentin, CA 94964

Edward Jagels, Esq.
Kern Co. District Attorney
1415 Truxton Ave.
Bakersfield, CA 93301

Each said envelope was then, on August 1, 1995, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 1995, at Sacramento, California.

Kristi Hamilton
DECLARANT

ORIGINAL FILED
AUG 15 1995
CLERK, U.S. DIST. COURT
Eastern District of California

LYNNE S. COFFIN, State Bar No. 121389
CALIFORNIA APPELLATE PROJECT
One Ecker Place, Suite 400
San Francisco, California 94105
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DENISE KENDALL, State Bar No. 120802
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862 Sir Francis Drake, No. 301
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Telephone: (415) 258-0296

Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

DEATH PENALTY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEATH PENALTY CASE

ROBERT FREDERICK GARCEAU, Petitioner, v. ARTHUR CALDERON, Warden of California State Prison at San Quentin, Respondent.	CASE NO. CV-F-5363-OWW-P SPECIFICATION OF NON-FRIVOLOUS ISSUES

TO THE HONORABLE OLIVER W. WANGER, JUDGE OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA:

Petitioner ROBERT FREDERICK GARCEAU, through his attorney, Lynne S. Coffin, Supervising Attorney, California Appellate Project, hereby submits, pursuant to Rule 191(h)(3) of the Local Rules of the United States District Court for the Eastern District

/ / / /

/ / / /

of California, a Specification of Non-frivolous Issues.

DATED: June 16, 1995 Respectfully submitted,

DENISE KENDALL
LAW OFFICES OF DENISE KENDALL

LYNNE S. COFFIN
CALIFORNIA APPELLATE PROJECT

By Lynne S. Coffin
LYNNE S. COFFIN
Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

A. **Procedural History**

1. On May 12, 1995 this Court entered an order staying the execution of Petitioner for forty-five days to permit appointment of counsel. Subsequently, the selection board recommended the appointment of Lynne S. Coffin of the California Appellate Project and Denise Kendall as co-counsel for petitioner. Thereafter on June 16, 1995, this Court ordered a temporary stay of execution for one hundred and twenty (120) days for petitioner to prepare and file his petition of writ of habeas corpus.

2. Based on a very preliminary review of the case materials, counsel believe there are a number of substantial federal constitutional issues that implicate the validity of both the judgment and the sentence imposed in this case. Counsel have set forth those issues below in the specification of non-frivolous issues pursuant to Local Rule 191(h)(3).

B. **Specification of Non-frivolous Issues**

Petitioner Robert Frederick Garceau through his attorney, hereby submits the following statement of non-frivolous issues pursuant to Local Rule 191(h)(3). Based on a preliminary review of case materials, counsel believes the following federal constitutional issues exist in this case and are among the issues that may be raised on petitioner's behalf in a petition for habeas corpus:

1. The guilt, special circumstances, and judgment of death were unconstitutionally found and imposed in violation of petitioner's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution because the prosecutor improperly employed peremptory challenges to

purposefully exclude Hispanic women from the jury.

a. The record shows that the prosecutor improperly exercised peremptory challenges to remove all of the Hispanic women from the jury. Initially, the prosecutor challenged the following perspective jurors: Sharon Montoya, Dolores Nejera, Jane Chavez, Lucy Martinez, and Hope Vasquez. Immediately following the excusal of Vasquez, defense counsel moved for a mistrial on the ground that the prosecutor improperly had exercised peremptory challenges on the basis of groups bias, resulting in the purposeful exclusion of Hispanic women. Defense counsel made a second motion for mistrial immediately following the prosecutions' exercise of a peremptory challenge against Rita Asuncion, the sixth and sole remaining Hispanic woman on the panel. The trial court denied the defense motion.

b. The prosecutor's use of peremptory challenges to strike each and every Hispanic woman from the jury exhibited a group bias in violation of petitioner's rights to a fair trial and equal protection of law. Swain v. Alabama (1965) 380 U.S. 202; Batson v. Kentucky (1986) 476 U.S. 79

2. Improper arguments made by the prosecutor during the penalty phase of petitioner's trial violated petitioner's rights under the Eighth and Fourteenth Amendments to the United States Constitution. The record shows that the prosecutor improperly invoked and injected such matters as future dangerousness and petitioner's military service into the penalty determination, thus violating petitioner's rights of due process and fundamental fairness, and the right to a reliable and individualized sentence. Lockett v. Ohio, 438 U.S. 586, 57

L.Ed.2d 973, 98 S.Ct. 2954 (1978); Enmund v. Florida, 458 U.S. 782, 73 L.Ed.2d 1140, 102 S.Ct. 3368 (1982).

DATED: 9/14, 1995

Respectfully submitted,

DENISE KENDALL

LYNNE S. COFFIN

CALIFORNIA APPELLATE PROJECT

By _____
LYNNE S. COFFIN
Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

LYNNE S COFFIN, Staff Attorney
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ORIGINAL FILED
AUG 15 1995
CLERK, U.S. DIST. COURT
Eastern District of California

DEATH PENALTY

On behalf of ROBERT FREDERICK GARCEAU

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEATH PENALTY CASE

ROBERT FREDERICK GARCEAU,

Petitioner,

Case No CV-F-5363-OWW-P

PETITONER'S OPPOSITION TO MOTION TO VACATE THE STAY OF EXECUTION

ARTHUR CALDERON, as Warden of California State Prison at San Quentin,

Respondent.

_____/

Petitioner ROBERT FREDERICK GARCEAU, through counsel, hereby opposes respondent's Motion to Vacate the Stay of Execution and requests this Court decline to enter an order requiring Petitioner to file his petition for writ of habeas corpus forthwith as requested by Respondent.

Petitioner also hereby gives notice that the date to hear Respondent's motion has been changed by stipulation between the parties from September 5, 1995 to [September 25, 1995 or October 2, 1995], 1995 at 10 00 a.m. or as soon thereafter as the Court can hear the matter.

/ / / /

DEATH PENALTY CASE

PROCEDURAL STATEMENT

On May 12, 1995 this Court entered an order staying the execution of Petitioner for forty-five days to permit appointment of counsel for petitioner. This order was requested on behalf of Petitioner by Doron Weinberg and Denise Kendall. The Court referred the matter to the Selection Board for its recommendation of one or more counsel to be appointed to represent Petitioner. The Selection Board recommended the appointment of the California Appellate Project and Denise Kendall as co-counsel to represent Petitioner. Thereafter, on June 16, 1995 this Court ordered a temporary stay of execution for one hundred twenty (120) days for Petitioner to prepare and file his petition for writ of habeas corpus.

Respondent now claims that petitioner should be made to file his petition forthwith because appointed counsel is not "counsel new to the case" within the meaning of Rule 191(h)(3) of the Local Rules of practice of the United States District Court for the Eastern District of California (hereinafter Rule).[1]

ARGUMENT

The heart of Respondent's contention appears to be set forth in footnote 3 of its motion, which makes clear that in Respondent's view in order to qualify as "new to the case," counsel must not have "previously had any exposure to or involvement in the direct appeal or state habeas matters." (Respondent's Motion to Vacate the Stay of Execution (hereinafter Motion), page 3, fn. 3.) Clearly this is not what the rule contemplates. It would be ludicrous to suggest an attorney who has at one time briefly consulted on a capital case in any capacity is thereby precluded from receiving a 120-day stay to read the lengthy record, investigate the case, and prepare the petition. To the contrary, what the rule actually contemplates is a situation in which

_____

[1] Rule 191(h)(3) provides, in pertinent part. "Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the Court shall issue a temporary stay of execution. . . ."

lead counsel in state court proceedings does not go forward as lead counsel in federal court proceedings. That is precisely the situation here. Lead counsel throughout the state court proceedings in the instant case was Doron Weinberg. Denise Kendall became associated with the case after Appellant's Opening Brief and Appellant's Reply Brief were filed and when the majority of the work on the case had been completed. Denise Kendall was never lead counsel in the state court proceedings. (See Declaration of Denise Kendall, attached hereto and incorporated herein.)

It should be noted that the rule authorizes a stay in a situation in which lead counsel does not go forward. It does not preclude a stay where lead counsel does not go forward. Thus the Court is still free to grant a stay to continuing counsel upon a showing of good cause. That is the case here. Denise Kendall did participate in discrete portions of the case in the state court proceedings. She was never appointed by the State Supreme Court to represent Petitioner, but merely worked on portions of the case at the behest of and under the direction of appointed lead counsel Doron Weinberg. Her work on the case began after the majority of the preparation of the case was completed in state court. Because she was not lead counsel, she did not have the authority or decision-making power necessary to prepare her to continue as lead counsel in federal court. Denise Kendall did not participate in the preparation of the case in state court to the extent that would enable her to file forthwith a petition in federal court. (See Declaration of Denise Kendall.)

Respondent relies on the case of In re Parker, 49 F.3d 204 (6th Cir. (1994) for the proposition that a district court's stay of execution must be vacated where "counsel [is] familiar with and previously of record." (Respondent's Motion, p. 5.) Respondent, however, obfuscates the true import of that court's ruling which is that a federal court stay of execution cannot be invoked in order to pursue additional state court remedies. In re Parker, supra, at 627. In that case the petitioner underwent two rounds of state appellate court proceedings with the same counsel. He then obtained a stay in federal court in order to attack the effectiveness of that

counsel again through a state court proceeding. The court's holding was not premised on the fact that he had the same counsel continuing from state to federal court, but rather that petitioner sought the aid of a federal stay of execution to allow him to delay his resort to federal court "while he goes on to file yet additional proceedings in the state court." Id. at 626. In the present case, Petitioner has sought a stay of execution before this Court in order to become familiar with the entire state court record, investigate the case, and prepare the petition for writ of habeas corpus.

Counsel has prepared and is filing simultaneously with this Opposition a specification of non-frivolous issues as contemplated by Rule 191(h)(3).

CONCLUSION

For all the foregoing reasons Petitioner respectfully requests this Court deny Respondent's motion to vacate the stay of execution.

Dated: 8/14/95

Respectfully submitted,

LYNNE S. COFFIN

DENISE KENDALL

Counsel for Petitioner
ROBERT FREDERICK GARCEAU

LYNNE S. COFFIN, State Bar No. 121389
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Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

ORIGINAL
FILED

SEP 19 1995

CLERK, U. S. DIST. COURT
Eastern District of California

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEATH PENALTY CASE

ROBERT FREDERICK GARCEAU, Petitioner, v. ARTHUR CALDERON, Warden of California State Prison at San Quentin, Respondent.	CASE NO. CV-F-5363-OWW-P SUPPLEMENTAL DECLARATION OF LYNNE S. COFFIN FILED IN SUPPORT OF PETITIONER'S OPPOSITION TO MOTION TO VACATE STAY OF EXECUTION

TO: THE HONORABLE OLIVER W. WANGER, JUDGE OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA:

Petitioner respectfully requests this Court to file the appended Declaration of Lynne S. Coffin in Support of Petitioner's Opposition to Motion to Vacate Stay of Execution presently set to

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/ / /

be heard before this Court on October 2, 1995.

DATED: September 18, 1995

CALIFORNIA APPELLATE PROJECT

BY: _____
LYNNE S. COFFIN
Supervising Staff Attorney

ATTORNEYS FOR PETITIONER
Robert Frederick Garceau

DECLARATION OF ATTORNEY LYNNE S. COFFIN

I, Lynne S. Coffin, declare as follows:

1. I am a member of the State Bar of California and a Supervising Staff Attorney at the California Appellate Project (CAP).

2. On June 16, 1995, this Court appointed the California Appellate Project as co-counsel for Petitioner with Denise Kendall, Esq. Since that time, I have been the attorney at CAP who has been assigned to represent petitioner. In that capacity, I have, with Denise Kendall, begun a review of the record, instituted the pre-petition investigation, and filed the necessary pleadings.

3. Prior to being hired at CAP in June, 1991, I was an associate in the San Francisco law firm of Larson and Weinberg. While at Larson and Weinberg, I worked on petitioner's automatic appeal to the California Supreme Court. Doron Weinberg, my supervisor, and I, read the trial record in this case, and under Mr. Weinberg's supervision, I drafted Appellate's Opening Brief, which Mr. Weinberg finalized and argued to the California Supreme Court. At no time was I appointed by the California Supreme Court to represent petitioner.

4. I was also involved, again, as an associate under the direction and supervision of Mr. Weinberg, in the development of issues to be raised in the habeas corpus petition to be filed in the California Supreme Court. However, I had already left the employ of Mr. Weinberg by the time decisions concerning the issues to be included in the habeas corpus petition were made, and the habeas corpus petition was actually drafted. I did not take part

in the most important aspects of the filing of this petition.

5. Moreover, the staff attorney at the California Appellate Project who was assigned to assist Mr. Weinberg was Gary D. Sowards. Until recently, Mr. Sowards was the attorney at CAP who was involved in whatever decisions were made concerning this case. I again became involved in the case only shortly before this Court appointed CAP as co-counsel.

6. Based on my prior involvement in this case, I do have a familiarity with the state court record and some of the investigation which was conducted while the case was pending in state court. However, I reviewed that record over five years ago. Additionally, I was not involved in the most important aspects of the preparation of the state habeas corpus petition and thus must complete a review of the investigation conducted in state court, as well as the investigation that remains to be done prior to the filing of the federal petition.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 18, 1995

LYNNE S. COFFIN

DECLARATION OF SERVICE

Re: GARCEAU V. CALDERON, CV-F-5363-OWW-P

I, Katherine Hollander, am over the age of 18 years, am not a party to the within entitled cause, and maintain my business address at One Ecker Place, Suite 400, San Francisco, California 94105.

I served the attached:

SUPPLEMENTAL DECLARATION OF LYNNE S. COFFIN IN SUPPORT OF PETITIONER'S OPPOSITION TO MOTION TO VACATE STAY OF EXECUTION

on the following individuals/entities by placing true and correct copies of the documents in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

Lizabeth Bellett
Deputy Attorney General
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Gales S. Enstad
County Clerk
Kern County Civic Center
1415 Truxton Avenue
Bakersfield, CA 93301

Edward Jagels
District Attorney
Kern County
1215 Truxton Avenue
Bakersfield, CA 93301

Robert F. Garceau
D-39413
San Quentin State Prison
San Quentin, CA 94974

All parties that are required to be served have been served.

I declare under penalty of perjury that service was effected on September 18, 1995 at San Francisco, California and that this declaration was executed on September 18, 1995 at San Francisco, California.

Katherine Hollander
KATHERINE HOLLANDER

ORIGINAL FILED
OCT 13 1995
CLERK, U.S. DIST. COURT
Eastern District of C...

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU, Petitioner, v. ARTHUR CALDERON, as Warden of San Quentin State Prison, Respondent.	No. CV-F-95-5363-OWW-P DEATH PENALTY CASE ORDER DENYING MOTION TO VACATE STAY OF EXECUTION, APPOINTING COUNSEL, SETTING DATES

The motion of Respondent to vacate the stay of execution issued by this court on June 16, 1995, was heard on October 2, 1995. The motion was denied on the ground that neither counsel appointed to represent petitioner had had the primary responsibility or control over the proceedings in the state court in which they worked on petitioner's behalf. Therefore, this court found the stay properly entered under Rules of Court 191(h)(3).

As a related issue the court, over respondent's objection, granted petitioner's request that the petition be filed no later than nine months from the date of this hearing. This motion was granted on two conditions: first, that the petition be filed sooner if possible and, second, that no further stays would

be granted absent a showing of exceptional circumstances by petitioner.

A telephonic status conference was ordered held on December 4, 1995 at 9:00 a.m.

Because of circumstances involving the California Appellate Project, the court relieved that project as second counsel in this proceedings and appointed Lynne Coffin pursuant to Rule 191(d)(2).

Dated: OCT 10 1995

OLIVER W. WANGER
OLIVER WANGER
United States District Judge

DECLARATION OF SERVICE BY MAIL

Re: Garceau v. Calderon **No.** CV-F-95-5363-OWW-P

I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause; my business address is P.O. Box 944255, Sacramento, California, 94244-2550. I served a true copy of the attached

ORDER DENYING MOTION TO VACATE STAY OF EXECUTION, APPOINTING COUNSEL, SETTING DATES

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Denise Kendall, Esq.
Lynne Coffin, Esq.
862 Sir Francis Drake, No. 301
San Anselmo, CA 94960

Mr. Robert F. Garceau
D-39413
San Quentin Prison
Tamal, CA 94974

Honorable Gale S. Enstad
Clerk, Kern County
1415 Truxtun Avenue
Bakersfield, CA 93301

Arthur Calderon, Warden
San Quentin Prison
San Quentin, CA 94964

Jerri Curtis
Capitol Case Coordinator
Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

Michael G. Millman, Esq.
Staff Attorney
Calif. Appellate Project
One Ecker Place, Ste 400
San Francisco, CA 94105

Arthur Ruthenback, Esq.
Federal Defender
801 K Street
Sacramento, CA 95814

Edward Jagels, Esq.
Kern Co. District Attorney
1415 Truxtun Ave.
Bakersfield, CA 93301

Each said envelope was then, on October 4, 1995, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 4, 1995, at Sacramento, California.

DECLARANT

FILED
NOV - 8 1995
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU,

Petitioner,

vs.

ARTHUR CALDERON, Warden of San Quentin State Prison,

Respondent.

No. CV-F-95-5363-OWW-P

DEATH PENALTY CASE

ORDER GRANTING EXTENSION OF TIME TO FILE CASE BUDGET AND STAY OF EXECUTION

On November 7, 1995, Petitioner filed an ex parte application for extension of time to file the initial funds request and case budget. On July 10, 1995, an order was issued setting the due dates for the initial funds request and the case budget on October 4 and 24, respectively. On September 15, 1995, Petitioner requested a 30 day extension for each filing. At the October 2, 1995 hearing, Petitioner's counsel represented to this Court the case budget could be filed within the next 30 days, notwithstanding the transition in process at CAP. Petitioner now requests an additional 30 days, until November 25, to file the initial funds request and 60 days, until December 24, to file the case budget.

IT IS ORDERED that Petitioner shall file his initial funds request by November 17, 1995, and shall file his case budget by November 27, 1995.

#31

IT IS FURTHER ORDERED that the telephonic status conference shall be held on December 4, 1995, at 9 a.m., as set at the October 2, 1995, hearing.

IT IS FURTHER ORDERED that Petitioner is granted a second temporary stay of execution for one hundred twenty (120) days from the date of this order to prepare and file his amended petition. Local Rule 191(h)(3).

DATED: November 8, 1995

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

United States District Court
for the
Eastern District of California
November 9, 1995

* * CERTIFICATE OF SERVICE * *

1:95-cv-05363

Garceau

v.

Calderon

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on November 9, 1995, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Denise Kendall
Law Office of Denise Kendall
862 Sir Francis Drake
Suite 301
San Anselmo, CA 94960

Lynne S Coffin
Coffin and Love
345 Franklin Street
San Francisco, CA 94102

John Adrian Gordnier
14th Floor
U S Attorney's Office
P O Box 944255
1300 I Street
Suite 125
Sacramento, CA 94425

Jack L. Wagner, Clerk

By: [illegible] Deputy Clerk

FILED
DEC 19 1995
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU,

Petitioner,

vs.

ARTHUR CALDERON, Warden of San Quentin State Prison,

Respondent.

No. CV-F-95-5363-OWW-P

DEATH PENALTY CASE

ORDER REGARDING FILING OF PETITION FOR WRIT OF HABEAS CORPUS AND ANSWER

A telephonic status conference was held before Judge Oliver W. Wanger on December 4, 1995. Appearances were made by Lynn Coffin and Denise Kendall for Petitioner, and by John A. Gordiner for Respondent. The parties agreed to the following time limits.

IT IS ORDERED Petitioner will file his federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on or before July 2, 1996.

IT IS FURTHER ORDERED that Respondent shall file an answer or otherwise plead to the petition in accordance with Rule 4 of the Rules Governing § 2254 Cases and Local Rule 191(i)(3) within 60 days after the filing of the petition, or by September 2, 1996.

#44

IT IS FURTHER ORDERED Petitioner will initiate a telephonic status conference between the parties and the court on September 17, 1996, in order to schedule further dates in this case.

DATED: December 14, 1995

Oliver W. Wanger
United States District Judge

lm

United States District Court
for the
Eastern District of California
December 19, 1995

* * CERTIFICATE OF SERVICE * *

1:95-cv-05363

Garceau

v.

Calderon

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 19, 1995, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Denise Kendall
Law Office of Denise Kendall
862 Sir Francis Drake
Suite 301
San Anselmo, CA 94960

Lynne S Coffin
Coffin and Love
345 Franklin Street
San Francisco, CA 94102

John Adrian Gordnier
14th Floor
U S Attorney's Office
P O Box 944255
1300 I Street
Suite 125
Sacramento, CA 94425

LG

Jack L. Wagner, Clerk

By: Deputy Clerk

DANIEL E. LUNGREN, Attorney General
of the State of California
GEORGE WILLIAMSON, Chief
Assistant Attorney General
JOHN A. GORDNIER (State Bar #45250)
Senior Assistant Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5169

Attorneys for Respondent

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU, Petitioner,	No. CV-F-95-5363-OWW-P **DEATH PENALTY CASE**
ARTHUR CALDERON, as Warden of San Quentin State Prison, Respondent.	OPPOSITION TO A TEMPORARY STAY TO OCTOBER 7, 1996

TO THE HONORABLE OLIVER W. WANGER, JUDGE OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA:

In an ex parte application for stay of execution served on Respondent on May 30, 1996, Petitioner asks that the stay due to expire on June 7, 1996, be extended until July 2, 1996, or, in the alternative, to October 7, 1996.

In its order issued October 10, 1995, this Court stated that the petition was to be filed within nine months from the date of hearing (July 2, 1996). It was also the order of the court that no further stays beyond that date would be permitted "absent a showing of exceptional circumstances by petitioner." The documents offered as part of the ex parte application make no showing of any

exceptional circumstances.

Local Rule 191(h)(1) provides that once the petition is filed the matter is stayed until the matter is finally resolved. Because the petition is to be filed by July 2, 1996, no temporary stay beyond that date needs to be granted.

Respondent has no objection to an extension of the present stay order due to expire June 7, 1996, for twenty-eight (28) days to and including July 2, 1996. Respondent has prepared a proposed order which, respondent believes, more nearly complies with the rules than either of the proposed orders offered by Petitioner; Respondent urges the Court to sign this proposed order.

By way of argument, Respondent would point out that in her reply to the earlier motion to vacate filed by Respondent, counsel for Petitioner specified only two issues as "non-frivolous." The nature of these issues are such that the intervening time since August, 1995, has been more than ample to properly research these issues and prepare a petition. No temporary stay which would extend the potential filing date of the petition is justified or necessary.

DATED: June 4th, 1996

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General
GEORGE WILLIAMSON
Chief Assistant Attorney General

JOHN A. GORDNIER
Senior Assistant Attorney General

Attorneys for Respondent

JAG:ss
SAPS1997003

DECLARATION OF SERVICE BY MAIL

Re: Garceau v. Calderon No. CV-F-95-5363-OWW-P

I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause my business address is P.O. Box 944255, Sacramento, California, 94244-2550. I served a true copy of the attached

OPPOSITION TO A TEMPORARY STAY TO OCTOBER 7, 1996

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Denise Kendall, Esq.
Lynne Coffin, Esq.
862 Sir Francis Drake, No. 301
San Anselmo, CA 94960

Mr. Robert F. Garceau
D-39413
San Quentin Prison
Tamal, CA 94974

Honorable Gale S. Enstad
Clerk, Kern County
1415 Truxtun Avenue
Bakersfield, CA 93301

Arthur Calderon, Warden
San Quentin Prison
San Quentin, CA 94964

Jerri Curtis
Capitol Case Coordinator
Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

Michael G. Millman, Esq.
Staff Attorney
Calif. Appellate Project
One Ecker Place, Ste 400
San Francisco, CA 94105

Arthur Ruthenback, Esq.
Federal Defender
801 K Street
Sacramento, CA 95814

Edward Jagels, Esq.
Kern Co. District Attorney
1415 Truxtun Ave.
Bakersfield, CA 93301

Each said envelope was then, on June 4, 1996, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 4, 1996, at Sacramento, California.

Anita Sandlin
DECLARANT

DANIEL E. LUNGREN, Attorney General
of the State of California
GEORGE WILLIAMSON, Chief
Assistant Attorney General
JOHN A. GORDNIER (State Bar #45250)
Senior Assistant Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5169

Attorneys for Respondent

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU, Petitioner, v. ARTHUR CALDERON, as Warden of San Quentin State Prison, Respondent.	No. CV-F-95-5363-OWW-P **DEATH PENALTY CASE** [PROPOSED] ORDER STAYING EXECUTION [Rules 191(h)(1) & 191(h)(3)]

On May 12, 1995, this Court entered an Order staying the execution of Petitioner for forty-five days to permit appointment of counsel for Petitioner. This order was requested on behalf of Petitioner by Doron Weinberg and Denise Kendall. The Court deferred the matter to the Selection Board for its recommendation of one or more counsel to be appointed to represent Petitioner. The Selection Board recommended the appointment of the California Appellate Project and Denise Kendall as counsel to represent Petitioner. The appointment of Lynne S. Coffin as lead counsel was in her capacity as a staff attorney at the California Appellate Project. Thereafter, on June 16, 1995, this Court ordered a temporary stay of execution for one hundred twenty (120) days for

Petitioner to prepare and file his petition for writ of habeas corpus.

Subsequently, Respondent filed a Motion to Vacate the Stay of Execution which was denied after hearing on October 2, 1995. The Court ordered that the Petition for Writ of Habeas Corpus be filed on July 2, 1996 or sooner if possible, and stated that no further stays would be granted subsequent to July 2, 1996, absent a showing of exceptional circumstances by Petitioner. This court also relieved the California Appellate Project as counsel and appointed Lynne Coffin pursuant to Rule 191(d)(2).

Further stays have been requested by Petitioner and good cause appearing, ordered by this Court every one hundred twenty (120) days, the last one to expire on June 7, 1996.

On May 30, 1996, Counsel filed an application requesting a stay pending resolution of the petition which will be filed on or before July 2, 1996, in compliance with this Court's order.

Accordingly, good cause appearing, it is hereby ordered that the present stay of execution which would expire June 7, 1996, shall be extended for twenty-eight (28) days to and including July 2, 1996 (Rule 191(h)(3), see specifically the last sentence of the Rule). Petitioner has been ordered to file his petition on or before July 2, 1996. Upon the filing of the petition, the execution shall be stayed by Rule 191(h)(1) until the matters raised in the petition are finally resolved.

The Clerk of the Court shall give immediate telephonic notice to Respondent, Arthur Calderon, Warden of the San Quentin Prison, that Petitioner's execution is stayed by Order of this

Court. The Clerk of the Court shall also serve a copy of this order on Respondent, Arthur Calderon, Warden of the San Quentin Prison, San Quentin, California; Michael Millman, California Appellate Project; and the Attorney General of the State of California.

IT IS SO ORDERED.

DATED:

OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE

Presented by:

DANIEL E. LUNGREN
Attorney General
GEORGE WILLIAMSON
Chief Assistant Attorney General

By:
JOHN A. GORDNIER
Senior Assistant Attorney General

Attorneys for Respondent

JAG:ms
SA95XV0003

DECLARATION OF SERVICE BY MAIL

Re: Garceau v. Calderon No. CV-F-95-5363-OWW-P

I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause; my business address is P.O. Box 944255, Sacramento, California, 94244-2550. I served a true copy of the attached

[PROPOSED] ORDER STAYING EXECUTION
[Rules 191(h)(1) & 191(h)(3)]

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Denise Kendall, Esq. Lynne Coffin, Esq. 862 Sir Francis Drake, No. 301 San Anselmo, CA 94960	Jerri Curtis Capitol Case Coordinator Ninth Circuit Court of Appeals P.O. Box 193939 San Francisco, CA 94119-3939
Mr. Robert F. Garceau D-39413 San Quentin Prison Tamal, CA 94974	Michael G. Millman, Esq. Staff Attorney Calif. Appellate Project One Ecker Place, Ste 400 San Francisco, CA 94105
Honorable Gale S. Enstad Clerk, Kern County 1415 Truxtun Avenue Bakersfield, CA 93301	Arthur Ruthenback, Esq. Federal Defender 801 K Street Sacramento, CA 95814
Arthur Calderon, Warden San Quentin Prison San Quentin, CA 94964	Edward Jagels, Esq. Kern Co. District Attorney 1415 Truxtun Ave. Bakersfield, CA 93301

Each said envelope was then, on June 4, 1996, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 4, 1996, at Sacramento, California.

Carla Sandlin
DECLARANT

LYNNE S. COFFIN, State Bar No. 121389
LAW OFFICES OF COFFIN & LOVE
345 Franklin Street
San Francisco, California 94102
Telephone: (415) 241-1169

DENISE KENDALL, State Bar No. 120802
LAW OFFICE OF DENISE KENDALL
862 Sir Francis Drake, No. 301
San Anselmo, California 94960
Telephone: (415) 258-0296

Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

COPY

ORIGINAL
FILED
JUL 02 1996
CLERK, U.S. DIST. COURT
Eastern District of Calif.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEATH PENALTY CASE

ROBERT FREDERICK GARCEAU,

Petitioner.

v.

ARTHUR CALDERON, Warden of California State Prison at San Quentin,

Respondent.

CASE NO. CV-F-95-5363-OWW-P

EX PARTE APPLICATION FOR STAY OF EXECUTION PENDING FINAL DISPOSITION OF HABEAS CORPUS PETITION

[Local Rule 191(h)(1)]

TO THE HONORABLE OLIVER W. WANGER, JUDGE OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA:

Petitioner Robert Frederick Garceau, through his attorney, Lynne S. Coffin, hereby applies for a stay of his execution pending final disposition of his habeas petition which has been filed contemporaneously with this application, on July 2, 1996, in accordance with Local Rule 191(h)(1)

and in compliance with this Court's previous orders.

DATED: July 1, 1996

Respectfully submitted.

LYNNE S. COFFIN
LAW OFFICES OF COFFIN & LOVE

DENISE KENDALL
LAW OFFICE OF DENISE KENDALL

By: _____
LYNNE S. COFFIN
Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

Grounds for Application

The grounds for this application are as follows:

1. Petitioner was sentenced to death in Kern County Superior Court on July 30, 1987, Case No. 29601. The California Supreme Court affirmed the judgment of death in People v. Garceau (Case No. S004776) on November 18, 1993 and the United States Supreme Court denied Petitioner's petition for writ of certiorari on October 3, 1994.

2. On May 12, 1995 this Court entered an Order staying the execution of Petitioner for forty-five days to permit appointment of counsel for Petitioner. This order was requested on behalf of Petitioner by Doron Weinberg and Denise Kendall. The Court referred the matter to the Selection Board for its recommendation of one or more counsel to be appointed to represent Petitioner. The Selection Board recommended the appointment of the California Appellate Project and Denise Kendall as counsel to represent Petitioner. The appointment of Lynne S. Coffin as lead counsel was in her capacity as a staff attorney at the California Appellate Project. Thereafter, on June 16, 1995, this Court ordered a temporary stay of execution for one hundred twenty (120) days for Petitioner to prepare and file his petition for writ of habeas corpus.

3. Subsequently, Respondent filed a Motion to Vacate the Stay of Execution which was denied after hearing on October 2, 1995. The Court ordered that the Petition for Writ of Habeas Corpus be filed on July 2, 1996 or sooner if possible, and stated that no further stays would be granted subsequent to July 2, 1996, absent a showing of exceptional circumstances by Petitioner. This court also relieved the California Appellate Project as counsel and appointed Lynne Coffin.

4. Further stays have been requested by Petitioner and good cause appearing, ordered by this Court every one hundred twenty (120) days, the last one to expire on July 2, 1996. Counsel now request a stay, in accordance with Local Rule 191(h)(1), pending resolution of the Petition which has been filed contemporaneously.

WHEREFORE, Petitioner respectfully requests that this Court issue a stay of Petitioner's

execution pending resolution of his Petition for Habeas Corpus filed on July 2, 1996.

DATED: July 1, 1996

Respectfully submitted,

LYNNE S. COFFIN
LAW OFFICES OF COFFIN & LOVE

DENISE KENDALL
LAW OFFICE OF DENISE KENDALL

BY: _____
LYNNE S. COFFIN
Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

LYNNE S. COFFIN, State Bar No. 121389
LAW OFFICES OF COFFIN & LOVE
345 Franklin Street
San Francisco, California 94102
Telephone: (415) 241-1169

DENISE KENDALL, State Bar No. 120802
LAW OFFICE OF DENISE KENDALL
862 Sir Francis Drake, No. 301
San Anselmo, California 94960
Telephone: (415) 258-0296

Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEATH PENALTY CASE

ROBERT FREDERICK GARCEAU,

Petitioner,

v.

ARTHUR CALDERON, Warden of California State Prison at San Quentin,

Respondent.

CASE NO. CV-F-5363-OWW-P

PROOF OF SERVICE

DECLARATION OF SERVICE

Re GARCEAU V. CALDERON, CVF-95-5363-OWW-P

I, Siobhan Noble, am over the age of 18 years, am not a party to the within entitled cause, and maintain my business address at 345 Franklin Street, San Francisco, California 94102.

I served the attached:

1. EX PARTE APPLICATION FOR STAY OF EXECUTION PENDING RESOLUTION OF HABEAS CORPUS PETITION;

2. [PROPOSED] ORDER STAYING EXECUTION

on the following individuals/entities by placing true and correct copies of the documents in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

John Adrian Gordnier
14th Floor
Attorney General's Office
P.O. Box 944255
1300 I Street
Suite 125
Sacramento, CA 94425

All parties that are required to be served have been served.

I declare under penalty of perjury that service was effected on July 2, 1996, at San Francisco, California and that this declaration was executed on July 2, 1996, at San Francisco, California.

Siobhan Noble

LYNNE S. COFFIN, State Bar No. 121389
LAW OFFICES OF COFFIN & LOVE
345 Franklin Street
San Francisco, CA 94102
Telephone No. (415) 241-1169

DENISE KENDALL, State Bar No. 102802
LAW OFFICES OF DENISE KENDALL
862 Sir Francis Drake, No. 301
San Anselmo, CA 94960
Telephone No. (415) 258-0296

Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

LODGED
JUL 02 1996
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT F. GARCEAU, Petitioner, v. ARTHUR CALDERON, Warden of California State Prison at San Quentin, Respondent.	**DEATH PENALTY CASE** CASE NO. CV-F-95-5363-OWW-P [PROPOSED] ORDER STAYING EXECUTION [Rule 191(h)(1)]

On May 12, 1995 this Court entered an Order staying the execution of Petitioner for forty-five days to permit appointment of counsel for Petitioner. This order was requested on behalf of Petitioner by Doron Weinberg and Denise Kendall. The Court referred the matter to the Selection Board for its recommendation of one or more counsel to be appointed to represent Petitioner. The Selection Board recommended the appointment of the California Appellate Project and Denise Kendall as counsel to represent Petitioner. The appointment of Lynne S. Coffin as lead counsel was in her capacity as a staff attorney at the California Appellate Project. Thereafter, on June 16, 1995, this Court ordered a temporary stay of execution for one hundred twenty (120) days for Petitioner to prepare and file his petition for writ of habeas corpus.

Subsequently, Respondent filed a Motion to Vacate the Stay of Execution which was denied after hearing on October 2, 1995. The Court ordered that the Petition for Writ of Habeas Corpus be

filed on July 2, 1996 or sooner if possible, and stated that no further stays would be granted subsequent to July 2, 1996, absent a showing of exceptional circumstances by Petitioner. This court also relieved the California Appellate Project as counsel and appointed Lynne Coffin pursuant to Rule 191(d)(2).

Further stays have been requested by Petitioner and good cause appearing, ordered by this Court every one hundred twenty (120) days, the last one to expire on July 2, 1996.

On July 2, 1996, in accordance with this Court's previous orders, Petitioner filed a Petition for Writ of Habeas Corpus.

Accordingly, good cause appearing, it is hereby ordered that the execution be stayed pending resolution of the petition pursuant to Rule 191(h)(1). The Warden of San Quentin Prison is ordered to stay the execution of Robert Frederick Garceau and all proceedings related thereto, and to stay the scheduling of any other execution date until resolution of the petition, unless extended by the Court.

The Clerk of the Court shall give immediate telephonic notice to respondent, Arthur Calderon, Warden of the San Quentin Prison, that Petitioner's execution is stayed by Order of this Court,. The Clerk of the Court shall also serve a copy of this order on respondent, Arthur Calderon.

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Warden of the San Quentin Prison, San Quentin, California, Michael Millman, California Appellate Project; and the Attorney General of the State of California.

IT IS SO ORDERED.

DATED:

OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE

Presented by:

LYNNE S. COFFIN
LAW OFFICES OF COFFIN & LOVE

DENISE KENDALL
LAW OFFICE OF DENISE KENDALL

By: _____
LYNNE S. COFFIN
Attorneys for Petitioner
ROBERT FREDERICK GARCEAU

82

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

PEOPLE OF THE STATE OF CALIFORNIA vs ROBERT FREDERICK GARCEAU No CR 11328 Date 1/13/85

Present

John M. Phillips Judge
LaVonne Poncetta Clerk
Connie Love Reporter
Jess Hancock Bailiff

Present Before the Court

X Defendant present
X DDA Michael Bartram
X DPD Fred Herro
X DPD Daniel Towle

Witnesses Sworn

Case regularly called for sentencing. Court has read and considered report and recommendation of probation officer and diagnostic report if any.
The court finds that defendant has been convicted of Ct I, vio of H&S Code Sec 11379, Manufacture of Methamphetamine; Ct. II, vio of H&S Code Sec 181/11379, Conspiracy to Manufacture Methamphetamine; Ct III, vio of P.C. Sec 12025(a), Felon in Possession of Concealable Firearm in Vehicle; Ct IV, vio of P.C. Sec 12021, Felon in Possession of Concealat Firearm on his Person; Ct VI, vio of P.C. Sec 187, Murder in the 1st Degree, w/personal use of a firearm w/in meaning of P.C. Sec 12022.5, each a felony.

Court determines that Defendant ( ) is (X) is not a suitable candidate for probation ( ) grants (X) denies probation, and states reasons

SENTENCE CHOICE: Count I, II, III, IV & VI

☒ Court considers entire record and other competent evidence, and finds in each Count
X circumstances in
(X) aggravation outweigh circumstances in mitigation
( ) mitigation outweigh circumstances in aggravation
( ) aggravation and mitigation are substantially equal
— no evidence presented or statements submitted in aggravation or mitigation

and imposes ( ) middle (X) upper ( ) lower term of 4 years each, in Cts I & II, Ct II stayed per
pursuant to (X) preceding finding ( ) stipulation ( ) negotiated plea and states reasons P.C. Sec 654; term of 3 yrs each in Cts III & IV, to run consecutive to Ct I and to each other - excess over 1/3 the middle term as to Cts III & IV stayed pending completion of sentence in Ct I, at which time sta becomes permanent. Ct VI, 25 yrs to life, w/ possibility of parole, plus 2 yrs for 12022.5 P.C. enhancement, to run consecutive to Cts I, III & IV. Total term - 32 yrs 4 mos to life.

☒ Court determines that the crime with the greatest principal term is Count I
☐ Counts _____ on attached page

JUDGMENT: X Defendant waives formal arraignment for judgment. X ( ) shows no legal cause why judgment should not be pronounced
Judgment is pronounced as follows

☐ IMPOSITION OF SENTENCE SUSPENDED FOR _____ YEARS, on terms of attached probation order
☒ DEFENDANT IS SENTENCED TO

(Cts 1,2,3 & 4)

___ Co. jail for _____, all but _____ days suspended
X Credit for time served found to be 411 days, of which _____ days were served in custody of Dept. of Corrections
___ EXECUTION OF SENTENCE SUSPENDED FOR _____ YEARS, on terms of attached probation order

X (X) State prison ( ) Youth Authority for 5 yrs 4 mos
+ 27 yrs to life for Ct 6 - total of 32 yrs
( ) Diagnostic report ordered per 1170(d) PC 4 mos to life.
X Sentence to run (X) consecutive ( ) concurrent
(X) to one another ( ) to any prior incomplete sentence.

___ Defendant accepts terms of probation
___ Bail is ( ) reinstated ( ) exonerated
( ) in the amount of _____ 15 days hereafter per 1303 PC
___ Bench Warrant dated _____ is recalled
___ Count _____
dismissed ( ) pursuant to plea bargain
( ) on grounds of _____
___ Defendant is found _____ able to pay costs of court appointed counsel
( ) ordered to pay $ _____
through Monterey County Collections Department
___ Work furlough is _____ recommended

X Defendant is
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
after expiration of sentence
X Advised of appeal rights
___ Handed a copy of probation order
___ To remain on bail/own recognizance
___ Remanded to custody of Sheriff
( ) for processing for release
X ( ) delivery to Calif Med Facility-Vacaville

_____
Judge of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

. . . . . .

The People of the State of California Plaintiff Against ROBERT FREDERICK GARCEAU, Defendant	No. 29601 **AMENDED** INFORMATION ENTERED 1-24

ROBERT FREDERICK GARCEAU is accused by the District Attorney of the said County of Kern by this information, of the crime of Felony, in two counts, to wit: First, Second Counts: Murder, in violation of Section 187 of the Penal Code, committed as follows:

FIRST COUNT

That said ROBERT FREDERICK GARCEAU, on or about and between September 1, 1984 and September 30, 1984, at and in said County of Kern, State of California, did willfully, unlawfully and with malice aforethought murder Maureen Farrell Bautista, a human being, in violation of Section 187 of the Penal Code, a felony.

IT IS FURTHER ALLEGED that in the commission and attempted commission of the above offense, the defendant, ROBERT FREDERICK GARCEAU, personally used a deadly and dangerous weapon, to wit: a knife, said use not being an element of the above offense, within the meaning of Penal Code Section 12022(b).

IT IS FURTHER ALLEGED that the defendant, ROBERT FREDERICK GARCEAU, was previously convicted of murder in the first degree in the Superior Court of Monterey County on November 27, 1985, within the meaning of Penal Code Section 190.2(a)(2).

IT IS FURTHER ALLEGED that the murder of Maureen Farrell Bautista was committed by the defendant, ROBERT FREDERICK GARCEAU, and, in addition to such murder, said defendant is now being charged with having murdered and has murdered Telesforo Bautista on and about the same date, within the meaning of Penal Code Section 190.2(a)(3).